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Patent Cooperation Treaty Legal Office

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SEP 30 1999

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In re Application of
GERHAEUSER et al
Application No.: 08/676,355
PCT No.: PCT/DE95/00055
Int. Filing Date: 16 January 1995
Priority Date: 19 January 1994
Attorney Docket No.: 960160
For: METHOD OF DETERMINING THE
RECEPTIVITY OF WIRELESS
SIGNALS IN A BROADCAST SYSTEM

DECISION ON PETITION

This is a decision on applicants' "Second Renewed Petition Pursuant to 37 C.F.R. 1.137(a)" filed in the Patent and Trademark Office (PTO) on 09 April 1999.

BACKGROUND

On 08 January 1999, this Office mailed a decision dismissing a previously filed petition under 37 CFR 1.137(a) on the grounds that applicant had not filed an acceptable showing of unavoidable delay. (See the decision for a complete discussion of the background of the application.)

On 09 April 1999, applicants filed the present renewed petition which again requests that the application be revived as having become unavoidably abandoned.

On 29 September 1999, during a telephone conference between the undersigned legal examiner and applicants' counsel, Karl Hormann, it was requested that should the petition to revive under 37 CFR 1.137(a) not be granted, the facts of the application be reconsidered under 37 CFR 1.182, and the abandonment of the application be withdrawn.

DISCUSSION

37 CFR 1.137(a)

As set forth previously, a petition to revive an abandoned application under 37 CFR 1.137(a) must be filed promptly and be accompanied by: (1) an adequate verified showing of the cause of the unavoidable delay; (2) a proposed response; (3) the petition fee required by law (37 CFR 1.17(l)); and (4) a terminal disclaimer and fee (if required under 37 CFR 1.137(c)). Applicants have satisfied items (2) and (3) above.

With respect to item (1), applicants still have failed to set forth a showing of any circumstances that would support a holding of unavoidable delay. Specifically, the arguments as to the unavoidable delay set forth in the present renewed petition again are directed to the events prior to the mailing of the Notification of Missing Requirements (Form PCT/DO/EO/905). However, as set forth in the decision mailed 08 January 1999, any arguments as to the unavoidable delay must be directed to the reason for abandonment of the application. Specifically, the present application became abandoned for failure to file a proper response to the Form PCT/DO/EO/905, and applicants still have not set forth how the failure to timely file a declaration of the inventors in response to the Form PCT/DO/EO/905 was unavoidable. It is noted that applicants ask in the present renewed petition "what they should have done in the circumstances described to avoid the abandonment of their instant application." In response, in order to avoid a holding of abandonment applicants should included in their 23 September 1996 response a copy of the declaration which the response urged had been previously filed.

Finally, a review of the application file reveals that a terminal disclaimer and fee, as required under item (4) above, have still not been filed.

Therefore, in that items (1) and (4) above have not been satisfied, the petition under 37 CFR 1.137(a) still may not be properly granted.

REVIEW UNDER 37 CFR 1.182

As set forth above, applicants have requested that the facts of the case be reconsidered under 37 CFR 1.182, and the abandonment of the application be withdrawn. The requisite petition fee of \$130 has been paid.

A review of the application file reveals that applicants urge that a declaration of the inventors was filed in the present application on 20 August 1996. In support of this contention, on 05 May 1997, as part of a request under 37 CFR 1.181, applicants submitted, inter alia, a copy of a declaration of the inventors, a copy of the cover sheet titled "Submission of Missing Documents", a copy of a "Request for Refund of Excessive Fee Paid", and a copy of a postcard receipt which itemizes, inter alia, a declaration and request for refund and which bears a PTO datestamp of 20 AUG 1996. Further, on 31 July 1998, applicants submitted as further proof a copy of the cancelled check which applicants state was also filed on 20 August 1996, which bears further PTO markings.

A review of the copy of the postcard receipt reveals that it does not bear any of the identifying indicia as set forth in the Manual of Patent Examining Procedure (MPEP) for properly identifying the application to which the papers were directed. As such the copy of the postcard receipt was found to be unacceptable for the purposes of granting relief under 37 CFR 1.181. However, on further review the copy of the postcard receipt bears the number "960160" which corresponds to the attorney docket number for the present application. Additionally, a review of the papers which applicants state were filed with the declaration on 20 August 1996, reveal that, while they identify application 08/767,355 as the application to which the papers are to be directed instead of the present application number, they do identify the proper international application number, PCT/DE95/00055, as well as the attorney docket number for the present application. Finally, a review of PTO records for application 08/767,355 reveals that the application was not filed until 18 December 1996, and that while the missing papers are not located in the application file, the PTO records and the copy of the cancelled check reveal that the fees paid 20 August 1996, have been credited to that application. In view of the facts above, it can be said with reasonable certainty that on 20 August 1996, the PTO received, inter alia, papers including a declaration of the inventors and surcharge for late filing of the declaration which were intended for, and contained sufficient information to allow the PTO to direct them to, the national stage application of PCT/DE95/00055, i.e., the present application. Therefore, upon petition and payment of the requisite petition fee, the requested relief may properly be granted.

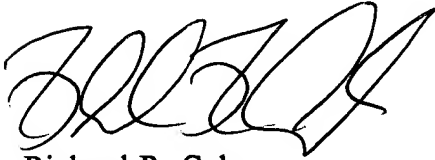
CONCLUSION

For the reasons above, the petition under 37 CFR 1.137(a) is DISMISSED without prejudice.

Also for the reasons above, the petition under 37 CFR 1.182 is GRANTED, and the abandonment of the application is hereby WITHDRAWN.

The application has an international filing date of 16 January 1995, under 35 U.S.C. 363, and a 35 U.S.C. 102(e) and 371(c) date of 17 September 1998.

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing in accordance with this decision, including the transferring of the \$105 in fees submitted on 20 August 1996 from application number 08/767,355 to the present application.

A handwritten signature in black ink, appearing to read 'RRC', is positioned above the printed name of the signatory.

Richard R. Cole
Legal Examiner
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RRC:rrc